



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

GLENN M. OKIMOTO  
DIRECTOR

Deputy Directors  
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FORD N. FUCHIGAMI  
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IN REPLY REFER TO:

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

ACCEPTANCE OF NON-CEDED LAND FROM THE UNITED STATES OF  
AMERICA, AND SUBSEQUENT SET ASIDE TO THE DEPARTMENT OF  
TRANSPORTATION, AIRPORTS DIVISION, SITUATE AT KALAELOA  
(FORMERLY KNOWN AS NAVAL AIR STATION BARBERS POINT),  
HONOULIULI, EWA, OAHU, TAX MAP KEYS: (1) 9-1-13: 33 and 46

OAHU

APPLICANT:

Department of Transportation, Airports Division (DOTA).

LEGAL REFERENCE:

Sections 107-10, 171-1, 171-30, 261-4, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

As shown on Exhibits "A-1" and "A-2", attached:

Lot 13073-A - referred to as the "Airport Wetland"; TMK (1) 9-1-13: 33; Land Court  
Application 1069, Land Court Map 971

Lot 13061-C - referred to as the "Fuel Farm"; TMK (1) 9-1-13: 46; Land Court  
Application 1069, Land Court Map 965

AREAS:

Lot 13073-A has 45.597 acres and Lot 13061-C has 7.316 acres, totaling 52.913 acres,  
more or less, subject to review by the State Survey Office.

ZONING:

State Land Use District: Urban  
County: F-1

**ITEM M-4**

LAND TITLE STATUS:

Not applicable. Federal lands

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES\_\_ NO X

CURRENT USE:

Vacant land with abandoned buildings and infrastructure.

CONSIDERATION:

Gratis

PURPOSE:

For future expansion of facilities at Kalaeloa Airport and to prevent incompatible land uses of future development by the current landowner in an area that could impede airport operations and safety.

CHAPTER 343, HRS – ENVIRONMENTAL REQUIREMENTS:

The two lots are being transferred in compliance with Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (Title 42 of the United States Code, Section 9620[h]). In addition, the Navy updated the site review process as described in the following reports -- ‘Finding of Suitability to Transfer, Property to be Transferred to the State of Hawaii, Department of Transportation, Former Naval Air Station Barbers Point, Oahu, Hawaii’ (August 2003) and ‘Finding of Suitability to Transfer Addendum, Lots 13061-C and 13073-A, Former Naval Air Station Barbers Point, Oahu, Hawaii’ (March 2010).

REMARKS:

In 1999, the Navy closed the former Naval Air Station Barbers Point and conveyed the “Kalaeloa Airfield” (Lots 13072-A and 13071-F) to the State of Hawaii, Department of Transportation (DOT) on July 1, 1999. The Board of Land and Natural Resources approved DOT’s request that was submitted on April 28, 2000 (refer to Agenda Item D-9), to accept the two parcels for airport use, and approve of and recommend to the Governor the issuance of an executive order setting aside the subject land for Airport purposes.

On October 7, 2002, the DOT submitted an application to the Navy to be the land recipient for the two subject lots. This application was approved and the Navy is desirous to convey the land by September 30, 2011. The Federal Aviation Administration

approved of DOT receiving the two lots in its letter dated November 18, 2002. With the Base Realignment and Closure Act (BRAC) process, federal land is conveyed in an “as is/where is” condition after the federal government completes the required mitigation of hazardous materials.

The “Airport Wetland”, located south of the airport’s intersecting runways, is mostly vacant land with some vegetation, and serves as a buffer zone to protect the airspace and for off-site storm water drainage purposes. The parcel contains three (3) buildings, an observation tower, a weather station, one small aboveground fuel storage tank, archeological sites (few clusters of Hawaiian settlements) and possible Native Hawaiian cultural features (for salt collection practices). These resources are considered eligible for the National Register of Historic Places and therefore, subject to a perpetual historic preservation covenant as permitted under HRS Chapter 6E (§ 6E-8). There is also a small two-acre, seasonal, non-jurisdictional wetland with about one acre of it subject to seasonal flooding and nesting habitat for endangered birds (though few in numbers, such as the Hawaiian stilt). DOT will monitor this area to prevent bird strike hazards at the airport.

The “Fuel Farm”, located north of the airport’s runway, is surrounded by land that was conveyed by the Navy to the Hawaii Army National Guard (HIARNG). The HIARNG expressed interest in a long term lease to use the parcel as a clear zone to satisfy its security requirements. The parcel contains ten (10) structures, five (5) aboveground storage tanks, and three (3) drywells. Although all hazardous waste has been mitigated by the Navy to industrial standard level, the Department of Health (DOH) may require that the lot be subject to a perpetual environmental covenant agreement as permitted by the Hawaii Uniform Environmental Covenants Act, HRS Chapter 508C, to restrict land use to industrial activities. If necessary or required by DOH, the environmental restrictive covenant shall be granted by the DOT with the holder of the covenant to be the DOH, in the form as attached hereto as Exhibit B.

RECOMMENDATION:


That the Board:

1. Accept the conveyance of Lots 13073-A and 13061-C from the UNITED STATES OF AMERICA, by and through the Department of the Navy, as Grantor, to the STATE OF HAWAII, by and through the Department of Transportation, as Grantee, pursuant to the Defense Base Realignment and Closure Act of 1990 under Public Law 101-510.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands for Airport purposes to be under the control and

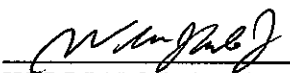
management of the DOTA, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

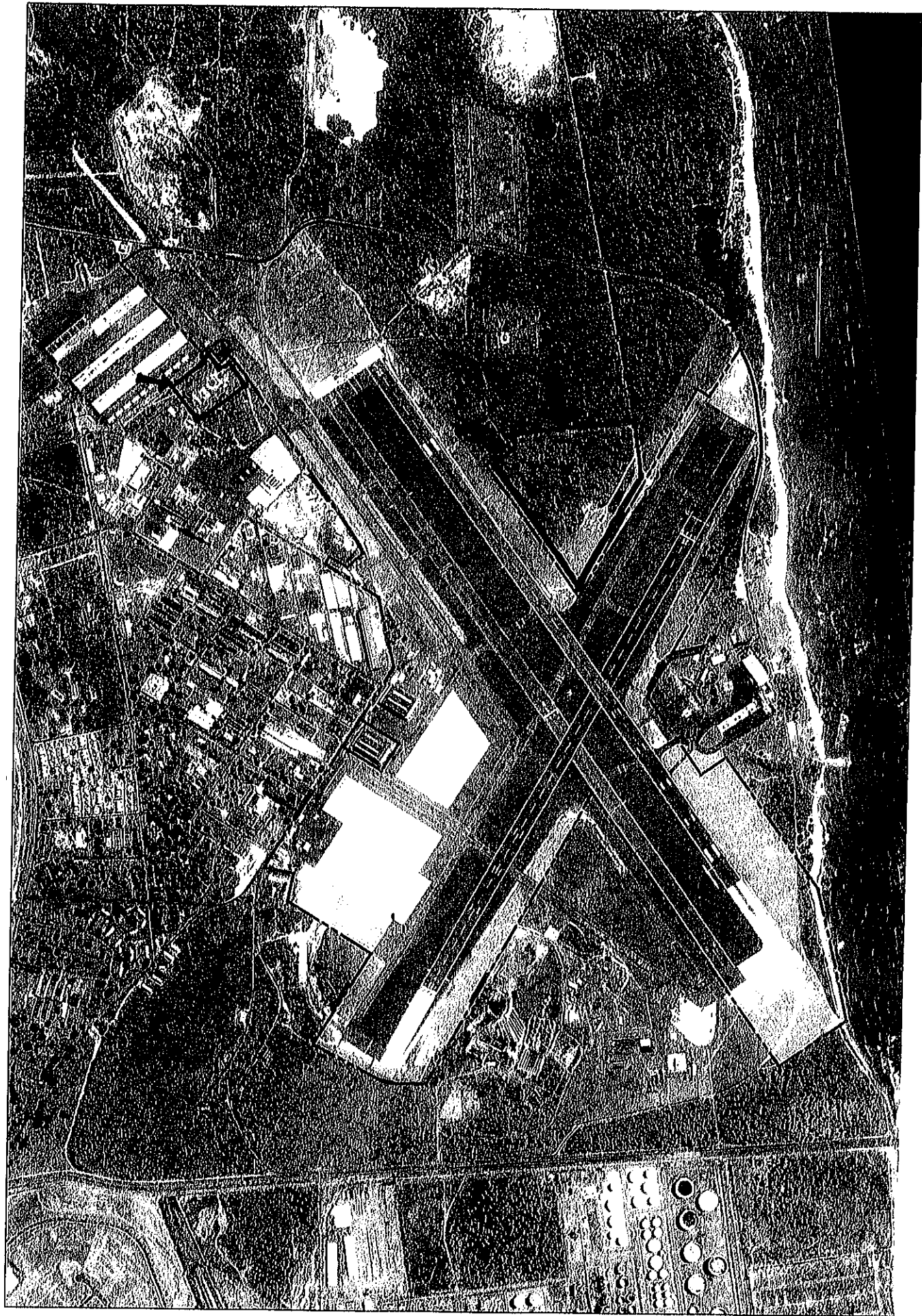
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by majority vote of both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of an immediate right-of-entry to the DOTA, for the purposes of control and management, subject to the following:
- A. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time;
  - B. The right-of-entry shall commence upon Board approval and expire upon the issuance of the subject executive order; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

  
\_\_\_\_\_  
GLENN M. OKIMOTO, Ph.D.  
Director of Transportation

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
WILLIAM J. AILA, JR.  
Chairperson and Member

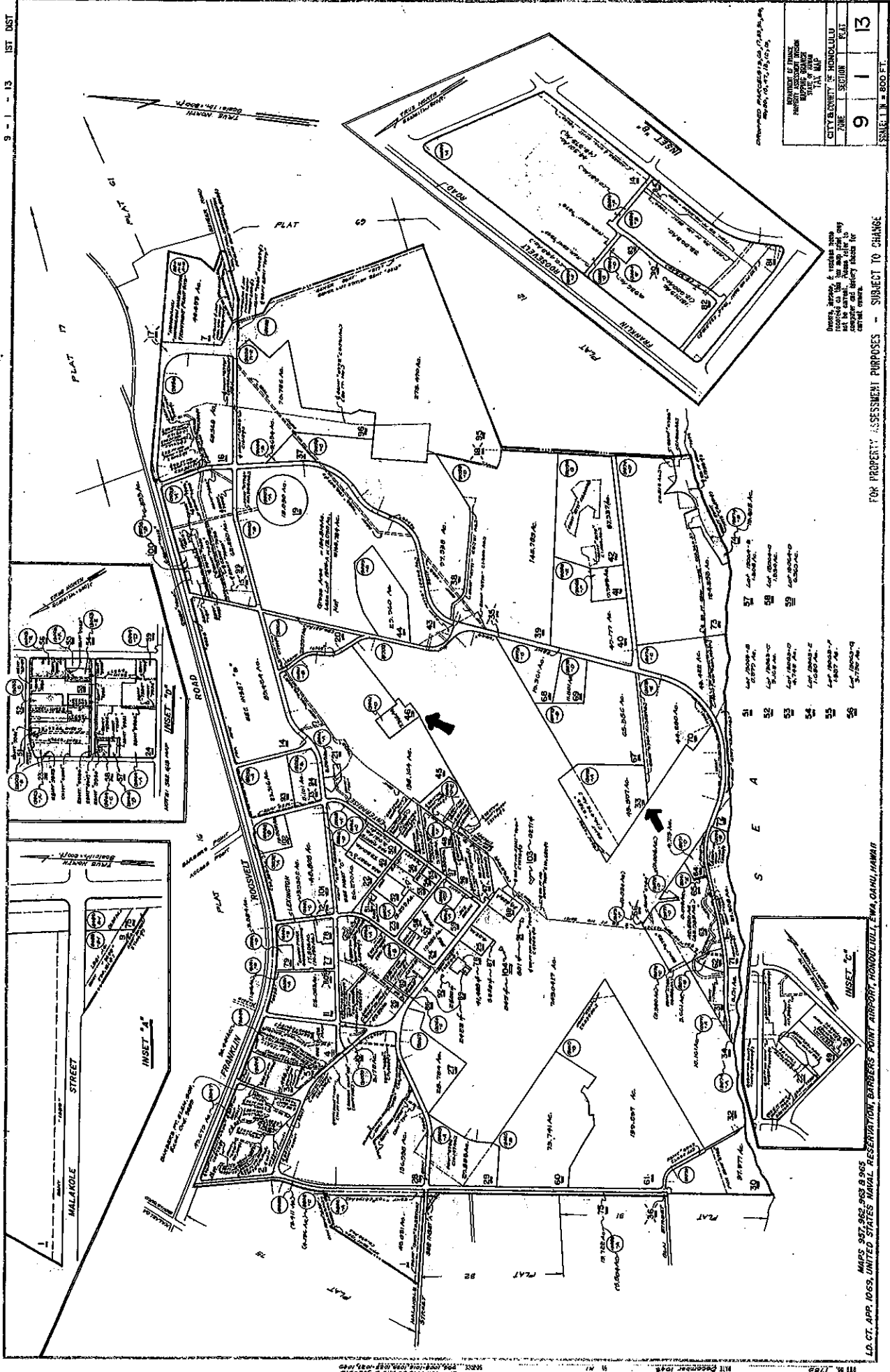


Boundary of Kalaeloa Airport is shown in red.

"Fuel Farm" Lot located north of runway, approximately seven (7) acres in size.

"Airport Wetland" located east of intersecting runways, approximately 46 acres in size.

Exhibit "A-1"



SECTION 13	9	1	13
CITY & COUNTY OF HONOLULU			
ZONE			
PLAT			
DATE			
TAX MAP			

1 INCH = 800 FEET

Parcel 33 is referred to as the "Airport Wetland"; 45.597 acres  
Parcel 46 is referred to as the "Fuel Farm"; 7.316 acres

LAND COURT

AFTER RECORDATION, RETURN TO:

REGULAR SYSTEM

RETURN BY: MAIL ☒ PICKUP ☐

THIS DOCUMENT COMPRISES \_\_\_\_ PAGES

Tax Map Key No.

ENVIRONMENTAL COVENANT AGREEMENT  
UNDER HAWAII REVISED STATUTES CHAPTER 508C

This Indenture is made as of the \_\_\_\_ day of \_\_\_\_\_, 2011, by the STATE OF HAWAII Department of Transportation – Airports Division (“Grantor”), by and through the Department of Transportation whose address is 400 Rodgers Boulevard, 7th Floor, Honolulu, Hawaii 96819, in favor of the State of Hawai’i, by its Department of Health, the address of which is 1250 Punchbowl Street, Honolulu, Hawaii 96813 (“Holder”);

WITNESSETH:

WHEREAS, On July 6, 2006, the Hawaii Uniform Covenants Act, Hawaii Revised Statutes Chapter 508C (“UECA”) became law in the State of Hawai’i. The legislature found that there is a growing reliance on the risk based cleanup of contaminated property when removal of contamination to unrestricted levels is infeasible, impracticable, or unnecessary. In such cases, certain land use restrictions, environmental monitoring requirements, and engineering controls known as Activity and Use Restrictions are required to protect the public and the environment from contamination that remains on the property. The Hawaii Department of Health, Hazard

Evaluation and Emergency Response Office uses environmental covenants to ensure compliance with the terms and conditions of risk based cleanup projects under Hawaii Revised Statutes Chapter 128D, and

WHEREAS, Grantor is the owner of certain property located at the former Naval Air Station Barbers Point and more particularly described in Exhibit A, attached hereto and made a part hereof, (the "Property"). and

WHEREAS, Grantor's predecessor in interest, The United States of America acting by and through the Department of the Navy, undertook certain environmental response activities on portions of the Property pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Section 9620(h) of title 42, U.S.C.), and

WHEREAS, The Administrative record for such environmental response activities is located at Department of the Navy, Pacific Division, Naval Facilities Engineering Command, Bldg 346, Makalapa Drive, Pearl Harbor, Hawaii 96860-3134, and

WHEREAS, In accordance with the process by which the State of Hawai'i plans to implement the Uniform Environmental Covenants Act as it relates to land use controls that the Hawaii Department of Health may have authority to require at environmental restoration sites at Department of Defense owned property, at the time the Property is transferred from federal ownership, the transferee of the property will execute a restrictive covenant regarding land use restrictions then in effect for environmental restoration sites in a form acceptable to the Hawai'i Department of Health, and record the covenant on the title of the property.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Grantor Covenants.

Grantor covenants for itself and for its successors and assigns that it shall comply with the following Activity and Use Restrictions for the Property:

(a) In the event that any sediment is removed from the existing dry wells, the locations of which are approximately as shown and described in Exhibit "A", attached hereto and made a part hereof. Grantor shall dispose of the sediment off site in an appropriate facility in accordance with applicable laws and regulations.

(b) Grantor covenants and agrees that use of the property at POI-37 (current Fuel Farm and also referred to as the Substation S1860 site), as further described in that Site Plan for Transformer Substation S1860 attached hereto as Exhibit "B", is restricted to industrial use only, as defined by the EPA's Standard Default Exposure Parameters, due to the existence of PCBs remaining on the



property. PCBs are present in soil at the Substation S1860 site at concentrations suitable for the intended industrial use.

2. The parties executing this Covenant intend it to be an “environmental covenant” Created and executed pursuant to UECA. The State of Hawai’i Department of Health is deemed to be a “Holder” in accordance with the UECA. The Property shall be burdened by the Activity and Use Restrictions described in Paragraph 1, above, to the benefit of the Holder. This Covenant is to be governed by and construed in accordance with Hawai’i law, and Courts sitting in the State of Hawai’i, including the United States District Court for the District of Hawaii to the extent it has jurisdiction.
3. The Grantor, for itself and on behalf of its heirs, successors, assigns, and all persons acquiring or owning any right, title, or interest in the Property and their respective heirs, successors, assigns, lessees, licensees, executors, administrators, devisees, and any users of the Property, now agree to comply with the Activity and Use Restrictions and incorporate either in full or by reference the Activity and Use Restrictions of this Covenant in any deed, lease, license or other instruments granting a right to use the Property and any mortgage.
4. This Covenant shall be perpetual unless amended, terminated or modified pursuant to and in compliance with UECA.
5. This Covenant shall be effective as such time as Grantor and the Holder have executed this Covenant.
6. Each person signing this Covenant warrants that, to the best of his or her knowledge, he or she is the appropriate individual to represent his or her own interest or the interest of the entity on whose behalf the person is signing this Covenant in matters related to this Covenant. Each person signing also warrants that he or she possesses the proper authority to enter into this Covenant in the capacity stated in the applicable signature block. Additionally, the Grantor warrants that to its knowledge, there are no recorded or unrecorded interests in the Property that have not been disclosed.
7. This Covenant may be amended or modified or terminated only by a recorded document signed by the Grantor and Holder after notice has been provided to the United States of America by and through the Department of Navy, and only in accordance with applicable provisions of UECA. No amendment, modification or termination of the Activity and Use Restrictions or other terms of this Covenant shall

amend, modify, or terminate any covenant or interest held by the United States in the Property.

8. This Covenant is subject to the enforcement provisions of UECA.
9. The Holder shall have the right to enter the Property at reasonable times and without prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Holder may otherwise have to enter and inspect the property. No confidential information secured by an official, agent, or employee of the Holder within the scope and course of his or her inspection shall be disclosed by them except as it relates directly to Property contamination and then, only in connection with their official duties and employment.
10. This Covenant and any modification, amendment or termination instrument shall be recorded with the State of Hawai'i Bureau of Conveyances or Office of the Assistant Registrar of the Land Court of the State of Hawai'i or both, as applicable. The Grantor shall provide a copy of the final recorded Covenant, any amendments, any termination documentation, and documentation of any other matters related to this Covenant to the Holder. The validity of this Covenant is not affected by failure to provide a copy of the Covenant. This Covenant is, however, subject to the laws of the State of Hawai'i governing recording and priority of interests in real property. A copy of this Covenant and any modifications, amendment or termination instrument shall be available at the Holder's Registry of Environmental Covenants.

IN WITNESS WHEREOF, the parties execute this Covenant as of this \_\_\_\_\_ day of \_\_\_\_\_, 2011.